

DAVID A. PROVINSE

IBLA 78-78

Decided January 13, 1978

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer, W 61129.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not been posted as available as prescribed by 43 CFR subpart 3112.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Noncompetitive Leases

A junior oil and gas lease offer is properly rejected when the senior offer subsequently is accepted and the lease is properly issued.

3. Appeals -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geological Structure -- Rules of Practice: Appeals: Effect of

A timely appeal from rejection of an oil and gas lease offer because of a determination of known geologic structure suspends the rejection pending decision by this Board, and where the Geological Survey

rescinds the KGS determination as having been erroneously made during the pendency of the appeal, the status quo ante of land involved [**2] is restored.

4. Appeals -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geological Structure -- Rules of Practice: Appeals: Effect of

Where land was omitted from an oil and gas lease only because of an erroneous KGS determination, and the applicant has preserved his priority by timely appealing the rejection, it is proper to amend such lease to include such omitted land when the Geological Survey rescinds its erroneous KGS determination.

APPEARANCES: David A. Provinse, Esq., pro se; Ted J. Gengler, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellee.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

David A. Provinse has appealed from a decision dated October 19, 1977, wherein the Wyoming State Office, Bureau of Land Management (BLM), rejected his offer to lease W 61129 for the reason that the land sought is embraced within oil and gas lease W 59614, issued effective August 1, 1977.

To place the appeal in proper perspective, it is necessary to discuss in some detail the history of lease W 59614.

Certain lands formerly within oil and gas lease W 4073-C, and described as SE 1/4 sec. 21, S 1/2 SE 1/4 sec. 22, NW 1/4 NW 1/4 sec. 26, SE 1/4 sec. 29, NW 1/4 sec. 35, T. 44 N., R. 75 W., sixth principal meridian, were listed as Parcel WY-76 on the May 1977 notice of lands available to oil and gas filing. 43 CFR 3112.1-2. The drawing entry card of William E. Frazier, Jr., was given first priority at a public drawing for Parcel WY-76, but before a lease issued, the Geological Survey informed BLM that the SE 1/4 SE 1/4 sec. 22, NW 1/4 NW 1/4 sec. 26, T. 44 N., R. 75 W., had been determined to be within an undefined known geologic structure (KGS) of an unnamed field, effective June 15, 1977. The BLM decision of July 20, 1977, rejected the lease offer of Frazier as to the 80 acres in the KGS and issued lease W 59614 as to the remaining 520 acres, effective August 1, 1977. Frazier appealed the partial rejection of his offer. Subsequent information given to this Board by the Geological Survey indicated that the June 15 KGS determination had been based upon

erroneous information from a commercial source and that there was no support for the inclusion of SE 1/4 SE 1/4 sec. 22, NW 1/4 NW 1/4 sec. 26, T. 44 N., R. 75 W., within a KGS. By decision, William E. Frazier, Jr., 32 IBLA 320 (1977), this Board set aside the BLM decision of July 20, 1977, as to the partial rejection of offer W 59614, and remanded the case to BLM for further consideration. Thereafter, by decision of October 19, 1977, BLM amended lease W 59614 by inclusion of the SE 1/4 SE 1/4 sec. 22, NW 1/4 NW 1/4 sec. 22, T. 44 N., R. 75 W., so that the lease, effective as of August 1, 1977, embraces an area of 600 acres, as originally described in Parcel WY-76 in the May 1977 simultaneous list.

Meanwhile on September 19, 1977, David Provinse filed offer W 61129, over-the-counter, for the SE 1/4 SE 1/4 sec. 22, NW 1/4 NW 1/4 sec. 26, T. 44 N., R. 75 W. This offer was rejected by BLM decision of October 19, 1977. Provinse appealed.

Essentially, Provinse argues that when he filed offer W 61129 the oil and gas plat for T. 44 N., R. 75 W., showed the SE 1/4 SE 1/4 sec. 22, NW 1/4 NW 1/4 sec. 26 to be unleased, not within any KGS, and open to leasing, and further that it was incorrect for BLM to have included this 80 acres as an amendment to lease W 59614 because the KGS determination of June 15, 1977, terminated any rights to the land therefore existent in offer W 59614. Frazier, in an answer, argues that Provinse misinterprets the law of the case, as well as the established law of Federal oil and gas leasing.

[1] At the outset, we point out that the 80 acres in issue were not available to over-the-counter offers when Provinse filed offer W 61124. Departmental regulations provide that land formerly under oil and gas lease must be posted under the simultaneous filing procedures set out in 43 CFR 3112, and only if no simultaneous filings are received does the land become available to over-the-counter filings. When the land was posted as part of Parcel WY 76 in the May 1977 notice, drawing entry cards were received so that if none of the first three cards drawn matured into an oil and gas lease, the lands would have to be reposted on a later simultaneous list. 43 CFR 3112.1-1(b). For that reason alone, the offer of Provinse, W 61124, could not have been accepted. A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not yet been posted as available as prescribed by 43 CFR subpart 3112. Jack E. Griffin, 7 IBLA 155 (1972).

[2] We look now at the contention of Provinse that BLM erred in amending lease W 59614 by inclusion of the SE 1/4 SE 1/4 sec. 22, NW 1/4 NW 1/4 sec. 26, after Geological Survey had reported these lands were no longer considered to be within any KGS. Provinse argues that the determination of June 15, 1977, terminated any

rights under offer W 59614 to this 80 acres. As indicated above, Frazier timely appealed from the rejection of his offer as to this 80 acres. When Geological Survey advised this Board that the KGS determination was in error, the Board set aside the BLM decision of rejection, and remanded the case of offer W 59614 for further consideration by BLM. Thereafter, BLM amended the lease by inclusion of the 80 acres. We find no error in this action. The 80 acres were available to noncompetitive oil and gas leasing when offer W 59614 was filed. Because of error in the information received from a non-Federal source, Geological Survey issued its KGS determination of June 15, 1977. Upon becoming acquainted with the true facts, Geological Survey rescinded the KGS determination as to these 80 acres. This action restored the land to the status it enjoyed when offer W 59614 was filed, and so it was not improper for BLM to amend lease W 59614 to include these 80 acres.

[3] Provinse overlooks the effect of a pending appeal upon a decision. As stated in 43 CFR 4.21(a), "a decision will not be effective during the time in which a person adversely affected may file a notice of appeal and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending decision on the appeal." The appeal by Frazier suspended the partial rejection of offer W 59614 because of the KGS determination, and with the rescission of the KGS determination before this Board ruled on the Frazier appeal, the status quo ante of the 80 acres was restored.

[4] The regulation, 43 CFR 3110.1-5, provides pertinently:

If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless, before the issuance of the amendment, the land office receives a withdrawal of the offer with respect to such land.

We hold, therefore, that where land was omitted from an oil and gas lease only because of an erroneous KGS determination, and the applicant has preserved his priority by appeal, it is proper to amend such lease to include such omitted land when the Geological Survey rescinds its erroneous KGS determination.

The contention by Provinse that he interpreted the oil and gas status records as indicating the availability of the 80 acres for noncompetitive oil and gas filing has no merit. Reliance upon information or opinion of any officer, agent or employee, or upon records maintained by BLM, cannot bind or estop the United States, or operate to vest any right not authorized by law. Mark Systems, Inc., 5 IBLA 257 (1972).

Provinse is in error in trying to equate the present situation with that considered in James A. Wallender, 26 IBLA 317 (1976). There Wallender had filed a noncompetitive lease offer for land shown on the records to be within a KGS determination. Ipsa facto, his offer was subject to rejection. At no time during the pendency of Wallender's appeal did Geological Survey rescind the KGS determination or modify it in any way. The case at bar is easily distinguishable on the facts.

We find no error in the action by BLM to include the subject 80 acres into lease W 59614 by amendment, or to reject offer W 61129 for the reason that the land therein sought is included in existing lease W 59614. Even if Provinse had filed an otherwise acceptable offer, a junior oil and gas lease offer is properly rejected when the senior offer subsequently is accepted, and the lease is properly issued. Duncan Miller, A-30570 (August 3, 1966).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

